Supreme Court, U.S.
FILED

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No. 01-

IN THE

Supreme Court of the United States

BRENDA O. SINGER, *et al.*,

Petitioners,

v.

CITY OF ALABASTER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

PETITION FOR A WRIT OF CERTIORARI

RAYMOND P. FITZPATRICK, JR.
Counsel of Record
FITZPATRICK, COOPER & CLARK LLP
Attorneys for Petitioners
Farley Building, Suite 600
1929 Third Avenue North
Birmingham, Alabama 35203
(205) 320-2255

53 pp

QUESTIONS PRESENTED

1. Whether a suit by voters under 42 U.S.C. § 1983 alleging the denial of the right to vote must be dismissed for lack of jurisdiction when the defendant municipality has failed to comply with Section 5 of the Voting Rights Act of 1965?

2. Whether the preclearance requirements of Section 5 of the Voting Rights Act of 1965 takes precedence over the individual rights of persons denied a vote when a municipality fails to comply with Section 5?

PARTIES TO THE PROCEEDINGS

Petitioners:

Brenda O. Singer

Patsy H. Cannon

Gwen Dill

John D. Harmon

Respondents:

City of Alabaster, an Alabama Municipal Corporation

Steve Rauch, in his official capacity as Mayor of the City of Alabaster

Bobby Lee Harris

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Petitioners Brenda O. Singer, et al., respectfully pray that the Supreme Court of the United States grant a writ of certiorari to review the judgment of the Supreme Court of Alabama entered on November 9, 2001 in appeal number 1000093. Pet. App. 1a. That order upheld an unreported order entered by the Circuit Court of Shelby County, Alabama dated September 22, 2000. Pet. App. 17a. In this case, the City of Alabaster denied 101 legal voters the opportunity to have their votes counted in a City Council election because the City had not adopted a district plan that was approved under § 5 of the Voting Rights Act of 1965. Petitioners' suit under 42 U.S.C. § 1983 to enforce their constitutional rights by nullifying the election until the City adopted a lawfully precleared district plan was dismissed by the state courts. Petitioners contend that this Court should reconcile the competing interests between the policies of § 5 and the individual constitutional right to vote of the petitioners.

OPINIONS BELOW

The decision of the Supreme Court of Alabama has not yet been reported in the Southern reporter. The manuscript citation is *Singer v. City of Alabaster*, [MS. 1000093, Nov. 9, 2001] __ So. 2d __ (Ala. 2001). The decision of the Circuit Court of Shelby County, Alabama in case no. CV-00-850 is unreported.

STATEMENT OF JURISDICTION

The Supreme Court of Alabama issued its decision affirming the lower court's order on November 9, 2001. No petition for rehearing was filed. This Court has jurisdiction to consider this petition pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioners challenge the respondent City of Alabaster's conduct as violative of the equal protection requirements of the Fourteenth Amendment and the Fifteenth Amendment to the United States Constitution. *See* Pet. App. 27a. The state courts found they were divested of jurisdiction by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. Pet. App. 27a.

STATEMENT OF THE CASE

This appeal challenges the decision of the City of Alabaster, Alabama to disenfranchise entirely some 101 of its citizens during recent City Council elections. The action was originally filed as a state law statutory election contest by four petitioners of the City of Alabaster and a complaint under 42 U.S.C. § 1983 alleging violations of rights guaranteed by the Fourteenth and Fifteenth Amendments. Pet. App. 24a. All four voters are qualified voters residing in a subdivision known as "Weatherly" located in the City of Alabaster. All four voters had their votes disallowed in the City Council election conducted by the City of Alabaster on August 22, 2000. It is undisputed that if these four voters' ballots had been counted, along with ninety-seven (97) other similarly situated voters, that respondent Bobby Lee Harris would not have been elected Ward One Council Member and his opponent would have been elected. The voter-petitioners seek review of the dismissal of their claims.

A. Proceedings in the Circuit Court of Shelby County, Alabama.

Petitioners filed this action in the Circuit Court of Shelby County on August 28, 2000. Pet. App. 4a, 21a. The complaint sought a declaratory judgment nullifying the election and a preliminary and permanent injunction enjoining the City of Alabaster from filling the contested seat until the Court could rule upon the merits. Pet. App. 24a, 25a. The named defendants were the City of Alabaster, its Mayor and Bobby Lee Harris, the incumbent City Council member from Ward 1 and the candidate that Alabaster declared as the winner after the August 22, 2000 election. Pet. App. 22a. Petitioners alleged that the defendants' actions violated their rights under the provisions of the Constitution of the State of Alabama, Art. I §§ 1, 2, and 34, and the Fourteenth and Fifteenth Amendments to the Constitution of the United States, as made enforceable by 42 U.S.C. § 1983. Petitioners also alleged that such actions of the defendants violated § 2 of the Voting Rights Act of 1965. Finally, petitioners asserted a properly grounded contest of the election under Code of Alabama, 1975, §§ 11-49-69(a)(1) and (4). Pet. App. 4a, 5a, 17a.

The defendants answered the petitioners' complaint by claiming that Section 5 of the Voting Rights Act of 1965 provided authority for excluding these voters from the electoral process. C 22, 47. The defendants also filed motions to dismiss. Pet. App. 4a, 18a; C 33. Defendants claimed that because the City had not obtained Section 5 preclearance of its placement of the 101 voters in Ward 1 or any other electoral district, they were justified in excluding the 101 voters from voting in any City Council elections. *Id.*

After a hearing on the motions conducted on September 18, 2000, the Circuit Court issued an Order on September 22,

2000 granting the motions to dismiss. The Court did not reach the merits of plaintiffs' claims, but instead dismissed the case, stating in part, "A state court must not order relief that violates federal law . . . The Alabama Supreme Court has held that 'cases involving the interpretation of the preclearance requirements of § 5 of the [F]ederal Voting Rights Act are within the exclusive jurisdiction of the federal courts.' " Pet. App. 19a.

Petitioners filed a timely Notice of Appeal to the Supreme Court of Alabama on October 5, 2000. C 112.

B. The Undisputed Facts.

This case seeks review of the dismissal of a complaint on initial motions to dismiss. Accordingly, the allegations of the verified complaint should be accepted as true in reviewing this matter. Indeed, the defendants substantially admitted the material facts of the complaint.

During the years 1994-1996, the City of Alabaster (hereinafter referred to as "City") annexed several tracts of land located in the Weatherly subdivision in Shelby County, Alabama. Pet. App. 2a, 19a, 23a. The petitioners are residents of the subject tracts that were annexed pursuant to Alabaster City Ordinances No. 94-338 and No. 96-410. Pet. App. 22a. In compliance with state law, the City placed the parcels which are the subject of the Weatherly annexation into Ward 1 for purposes of City Council representation. Pet. App. 2a, 3a.

At the time that the annexation ordinances were approved in 1994-96, the City did not seek preclearance from the U.S. Department of Justice under Section 5 of the Voting Rights Act of 1965. The first effort to obtain preclearance by

the Attorney General was made in 2000. Pet. App. 3a. On July 10, 2000, the Department of Justice requested additional information from the City regarding these annexations. Pet. App. 3a. On August 16, 2000, the Department of Justice responded to the City's submissions stating,

> [t]he Attorney General would normally postpone a decision on the merits of your submission until the city responded fully and accurately to our July 10, 2000, letter. However, the city has asked us to issue a substantive Section 5 determination regarding the submitted changes based on the current incomplete record because of the city's fast approaching August 22, 2000, election.

C 40. The Department of Justice went on to state that it did not object to the annexation ordinances No. 94-338 and No. 96-410, but that it objected to the assignment of the annexed lands to Ward One. Pet. App. 3a; C 40, 43.

The complaint alleged that

> on August 21, 2000, the City Council of Alabaster met in secret session, in violation of the Alabama Open Meetings Act, and agreed not to allow the votes cast in the Weatherly subdivision to be counted in the Ward 1 Council race or any other Council election to be held the following day.

Pet. App. 23a. The municipal defendants did not answer this allegation. C 21.

On August 22, 2000, the City of Alabaster held the regularly scheduled election for the offices of Mayor and

members of the City Council of Alabaster. Pet. App. 4a. The residents of the Weatherly annexed tracts were permitted to vote for the office of Mayor, but subsequently had their votes disallowed for the office of Ward 1 council member. *Id.* Nor were their votes counted for any other city council member election. *Id.* Ninety-three persons from the contested annexation area voted, and all ninety-three persons voted for Ward 1 candidate Todd Goode.[1] C 4, 21, 46, 61.

According to the observer from the U.S. Department of Justice, in the August 22 election, 714 persons cast ballots in Ward 1 for City Council. C 61. Three hundred eighty-eight (388) ballots were cast for Todd Goode. *Id.* Three hundred twenty-six (326) were cast for Bobby Lee Harris. *Id.* However, one hundred one (101) ballots were disallowed that had been cast for candidate Goode. *Id.* Thus, the City certified the results as follows: Bobby Lee Harris, three hundred twenty-six (326) votes; and Todd Goode, two hundred eighty-seven (287) votes. *Id.* The remaining one hundred one (101) votes [ninety-three (93) in person ballots, and eight (8) absentee ballots] were not tallied in any race for City Council. Pet. App. 4a; C 46, 61.

C. The Decision of the Supreme Court of Alabama.

The Supreme Court of Alabama affirmed the circuit court's dismissal of the complaint. Pet. App. 1a. Finding that all actions involving § 5 of the Voting Rights Act of 1965 are within the exclusive jurisdiction of the federal courts and furthering finding that this case "arises under" § 5, the

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1. There were also 8 absentee ballots cast from these same excluded parcels. All 8 of these ballots were also cast for Mr. Goode. C 61.

Court found that the state courts are divested of jurisdiction over all matters raised in the complaint. Pet. App. 10a.

In response to petitioners' claim that this case was not brought to enforce § 5, the Supreme Court found that "state jurisdiction can exist only if a full adjudication of the plaintiffs' lawsuit is possible without consulting § 5." Pet. App. 7a. The Court found that the remedy of "nullifying the Ward 1 election and delaying a second vote until the City has obtained preclearance, likewise directly involve[s] the application of § 5." Pet. App. 8a.

Two members of the Supreme Court of Alabama dissented, finding that the remedy of nullification should have been granted and the election delayed until the City obtained § 5 preclearance. Pet. App. 11a, 16a.

REASONS FOR GRANTING THE WRIT

I. This Court Should Decide The Unresolved Issue Of Whether A Municipality's Failure To Comply With Section 5 Insulates It From Claims By Voters Asserting A Denial Of Their Constitutional Right To Vote.

This case presents the question of first impression of whether the mere fact that a municipality has failed to comply with Section 5 of the Voting Rights Act of 1965 renders a lawsuit by adversely affected voters one that "arises under" Section 5. Petitioners recognize that while the interests of § 5 are important and must be protected, nothing in the statute is intended to divest federal or state courts of jurisdiction to adjudicate claims to enforce constitutional rights under 42 U.S.C. § 1983.

In this case, there is no dispute that the 101 voters were lawfully annexed into the City of Alabaster and the annexation was approved by the Attorney General under § 5. Pet. App. 3a. There is also no dispute that the assignment of the annexed lands of the 101 voters to Ward 1 was not approved by the Attorney General. *Id.* There is no dispute that the votes of the 101 voters were not counted in the Ward 1 election or any other council race. Pet. App. 4a.

Petitioners filed a lawsuit designed to protect their right to vote as well as the purposes of § 5 of the Voting Rights Act. Petitioners sought an order nullifying the August 22, 2000 election they were excluded from and maintaining the status quo[2] until the City complied with § 5 of the Voting Rights Act. Pet. App. 24a, 25a. While the principles of § 5 are important and should be honored, nothing in the Voting Rights Act divests courts of jurisdiction to decide a suit under 42 U.S.C. § 1983 or permits a municipality to escape liability for a blatant denial of the constitutional right to vote.

Petitioners' suit was carefully designed to balance the competing interests of § 5 and the right of the individual to vote. Petitioners' suit did not seek relief that was inconsistent with § 5. Petitioners sought to protect their individual rights until the City met its obligations under the Voting Rights Act.

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2. Under Alabama election statutes, municipal elections are held on the fourth Tuesday in August. Special elections may be held "when ordered by the municipal governing body." Code of Alabama, 1975, § 11-46-2. If an election is delayed, "the incumbent officers shall remain in office until their successors shall be elected and qualified." Code of Alabama, 1975, § 11-46-72. Here, respondent Harris was also the incumbent. Nullification of the August 2000 election would have simply extended his term until an election from a properly precleared district could be conducted.

The state courts held that they were without jurisdiction to adjudicate claims under 42 U.S.C. § 1983 because this case "arises under" § 5 of the Voting Rights Act. But, no claims have been asserted under § 5 by the petitioners — nor could they have been. There is no dispute that the City has not complied with § 5. There is also no dispute that the Attorney General did not preclear the current districting plan. Petitioners have no right to file a claim in the U.S. District Court for the District of Columbia to compel approval under § 5.[3] They had no control over the City's failure to comply with § 5. Petitioners took the only action possible, they filed a suit claiming the denial of their individual constitutional right to vote.[4]

No decision of this Court suggests that any collateral involvement of § 5 to a voting controversy divests state courts from jurisdiction to decide a claim for denial of the right to vote. In fact, this Court has made clear that state courts have the authority to determine issues collateral to preclearance, such as whether § 5 applies to specific voting changes:

> Granting state courts the right to decide, as a collateral matter, whether § 5 applies to contemplated

3. Section 5 provides that only the "State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment . . ." that an election practice meets the standards of the Voting Rights Act. 42 U.S.C. § 1973c; Pet. App. 28a.

4. Alabama courts have long exercised concurrent jurisdiction over actions filed under 42 U.S.C. § 1983 to enforce federal constitutional rights. *Brooks v. Hobbie*, 631 So. 2d 883, 888 (Ala. 1993) and cases cited therein; *Terrell v. City of Bessemer*, 406 So. 2d 337 (Ala. 1981) ("this day henceforth, courts of this state must accept jurisdiction over claims brought under 42 U.S.C. § 1983").

> changes in election procedures will help insure compliance with the preclearance scheme. Approval of this limited jurisdiction also avoids placing state courts in the uncomfortable position of ordering changes that they suspect, but cannot determine, should be precleared under § 5.

Hathorn v. Lovorn, 457 U.S. 255, 268-69 (1982). Here, the role of § 5 is far more marginal. There are no § 5 issues to decide. The only issue is whether a remedy may be fashioned to protect individual constitutional rights while § 5 interests are respected. The decision of the Supreme Court of Alabama leaves voters like petitioners without any remedy when their local government fails to comply with § 5 of the Voting Rights Act. Review by this Court is necessary to reconcile the obligations of § 5 with the constitutional imperative of the right of the individual to vote.

While this Court has previously dealt with difficulties of implementing the requirements of § 5 in the case of a jurisdiction that drags its feet for many years, *City of Rome v. United States*, 446 U.S. 156 (1980), it has never reconciled the competing interests of the individual right to vote with § 5.[5] Review by this Court is necessary to resolve this question.

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5. These competing interests were recognized, but not addressed, in the lower court's decision in *City of Rome v. United States*, 472 F. Supp. 221, 241-42 (D.D.C. 1979) (three judge court).

II. The State Court's Decision Conflicts With This Court's Decisions Confirming That The Right To Vote Is Absolute And Cannot Be Abridged.

The decision of the Supreme Court of Alabama dismissing petitioners' claims under 42 U.S.C. § 1983 for violation of rights secured by the Fourteenth and Fifteenth Amendments to the Constitution of the United States conflicts with the Court's many decisions recognizing that the right to vote is absolute.

In a well-established line of authority beginning with *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court has clearly and forcefully articulated both the substance and contours of the constitutional right to vote:

- "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections." *Reynolds v. Sims*, 377 U.S. at 554.

- The right to vote can neither be diluted nor denied outright. *Id.* at 555; *Kramer v. Union Free School Dist.*, 395 U.S. 621, 626 (1969).

- "Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast a ballot and have them counted." *Reynolds v. Sims*, 377 U.S. at 555.

- "Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the

> governmental affairs which substantially affect their lives." *Kramer v. Union Free School Dist.*, 395 U.S. at 626-27.

- "Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds v. Sims*, 37 U.S. at 562; *Kramer*, 395 U.S. at 626.

It is without dispute that 101 voters in Alabaster, Alabama have been completely disenfranchised from participation in their City Council elections. Although they reside in a subdivision that was lawfully annexed to Alabaster, their votes in the most recent City Council election were not counted because of the City's own failure to obtain § 5 approval of its electoral-district plan. Their exclusion is undisputed. It was admitted by counsel for the City, "that the people here were denied the right to vote . . ." R 50. The record further reflects:

> The Court: So the position then, the position of the defendants is that the — well, the residents within that particular area of Weatherly just won't be able to have any say so at all in the city council elections because of what happened; is that correct?
>
> Mr. Head [City's counsel]:
> Well, I will say in this particular city council election.

R 30.

The record similarly reflects elsewhere:

> The Court: Don't they get to vote somewhere, though, Frank? I mean, all the cases that you have, they ultimately get to vote somewhere.
>
> Mr. Head: No, they don't get to vote.
>
> The Court: They don't get to vote at all?
>
> Mr. Head: No . . .

R 51.

Petitioners' lawsuit sought relief for the denial of their voting rights guaranteed by the Fifteenth Amendment and denial of their equal protection rights guaranteed under the Fourteenth Amendment. Their suit to enforce those rights under 42 U.S.C. § 1983 was summarily dismissed. Nothing in the Voting Rights Act was intended to impair the rights of individuals to vote on an equal basis. This Court should grant review to resolve this conflict between the decision of the Supreme Court of Alabama and this Court's decisions protecting the right of the individual to vote.

III. This Case Presents An Issue Of National Importance For Review By This Court.

This Court should address the unresolved issue of whether the individual constitutional right to vote may be vitiated as a result a municipality's failure to meet its obligations under § 5 of the Voting Rights Act. Petitioners believe the Alabama courts were wrong in their conclusion that they have no jurisdiction to entertain an action to enforce

constitutional rights simply because the defendant municipality had failed to comply with § 5. The rights of the individual to vote should not be abridged, especially in a case like this where a remedy is available that respects the policy of § 5 yet preserves the right of the individual to vote. The City of Alabaster claimed that a delay in the election until after it could obtain § 5 preclearance was unrealistic. But, such a delay would have preserved the rights of all individuals to vote.

This Court addressed this very concern just last year: "The press of time does not diminish the constitutional concern. A desire for speed is not a general excuse for ignoring equal protection guarantees." *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388, 401 (2000), *see also id.*, at 412 (Stevens, J., dissenting). Stated otherwise, the desire of the City of Alabaster to avoid expense and the delay of the election did not justify the actions of the City to proceed with this election. This Court in *Bush* went on to state:

> The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by latter arbitrary and disparate treatment, value one person's vote over another. *See, e.g., Harper v. Virginia Bd. Of Elections*, 383 U.S. 663, 665 (1966) ([O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment"). It must be remembered that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the

> free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

Bush v. Gore, 148 L. Ed. 2d at 398. Here, the rights of the 101 voters that were denied the opportunity to vote in any City Council election were summarily denied by the respondent City of Alabaster. And, the courts have said there is no jurisdiction to consider their claims.

CONCLUSION

Petitioners request that this Court grant their petition for writ of certiorari and vacate the judgment of the Supreme Court of Alabama.

Respectfully submitted,

RAYMOND P. FITZPATRICK, JR.
Counsel of Record
FITZPATRICK, COOPER & CLARK LLP
Attorneys for Petitioners
Farley Building, Suite 600
1929 Third Avenue North
Birmingham, Alabama 35203
(205) 320-2255